

AMENDED IN SENATE JUNE 10, 2003
AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1051

Introduced by Assembly Member Goldberg

February 20, 2003

An act to amend Section 54999.1 of, and to add Sections 54999.7 and 54999.8 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1051, as amended, Goldberg. Capital facilities fees.

Existing law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory charge to pay the capital cost of a public utility facility.

This bill would revise the definition of the term “public utility service.” It would revise the definition of the term “capital facilities fee” to mean a nondiscriminatory charge, including, but not limited to, a connection fee, as defined, capacity charge, as defined, or both. The bill would require any judicial action or proceeding to seek a refund of a capital facilities fee, or service rate, commodity charge, or surcharge, as defined, or increase, or challenging the validity of a capital facilities fee, service rate, commodity charge, or surcharge, or increase, paid by a public agency to be commenced as specified. It would require any

action by a public utility service provider to be in accordance with specified law, and would place on the public agency imposing the capital facilities fee, service rate, commodity charge, or surcharge, or increase, the burden of producing evidence, as prescribed.

The bill, notwithstanding any of the existing provisions relating to the imposition of a capital facilities fee, would authorize a public agency that provides public utility service to charge a public agency *nondiscriminatory* service rates or charges, on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, including the costs of operation, maintenance, construction, repair, replacement, or rehabilitation of facilities, or debt service payments on facilities, not in excess of *the* reasonable ~~fees for~~ cost of providing the public utility service.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54999.1 of the Government Code is
2 amended to read:

3 54999.1. For purposes of this chapter:

4 (a) “Actual construction costs” includes the cost of all
5 activities necessary or incidental to the construction of a public
6 utility facility, such as financing, planning, designing, acquisition
7 of property or interests in property, construction, reconstruction,
8 and rehabilitation.

9 (b) “Capacity charge” means a charge imposed on customers
10 who are requesting new public utility services and that is designed
11 to recover costs of public utility facilities necessary to serve new
12 customers.

13 (c) (1) “Capital facilities fee” means any nondiscriminatory
14 charge imposed to pay for public utility facilities, including, but
15 not limited to, a connection fee, a capacity charge, or both.
16 “Capital facilities fee” does not include a service rate, commodity
17 charge, or surcharge, or any capital component thereof.

18 (2) A capital facilities fee, service rate, commodity charge, or
19 surcharge is imposed on the date on which the fee, rate, charge, or
20 surcharge is adopted by the public agency imposing it.

21 (d) “Connection fee” means a fee for the physical facilities
22 necessary to connect a public agency facility to a public utility,

1 including, but not limited to, meters, meter boxes, and pipelines to
2 make the connection, that does not exceed the actual cost of labor
3 and materials for the installation of those facilities.

4 (e) “Nondiscriminatory” means that the capital facilities fee
5 does not exceed a proportionate amount determined on the basis
6 of the same objective criteria and methodology applicable to
7 comparable nonpublic users.

8 (f) “Public agency” means the United States or any of its
9 agencies, the state or any of its agencies, the Regents of the
10 University of California, a county, a city, a district, a public
11 authority, or any other political subdivision or public corporation
12 of this state.

13 (g) “Public utility facility” means a facility for the provision
14 of water, light, heat, communications, power, or garbage service,
15 for flood control, drainage or sanitary purposes, or for sewage
16 collection, treatment, or disposal.

17 (h) “Public utility service” means service for water, light, heat,
18 communications, power, or garbage, or for flood control, drainage
19 or sanitary purposes, or sewage collection, treatment, or disposal,
20 provided by a public agency.

21 (i) “Service rate” or “commodity charge” means a rate or
22 charge billed on a monthly or periodic basis to all users to recover
23 the costs of providing public utility services to those users,
24 including the costs of operation, maintenance, construction,
25 repair, replacement, or rehabilitation of facilities, or debt service
26 payments on facilities.

27 (j) “State agency” or “state” means any state office,
28 department, division, bureau, board, or commission.

29 (k) (1) “Surcharge” means any additional charge or charges
30 billed on a monthly or periodic basis to all customers of a public
31 utility service provider for a particular purpose.

32 (2) A surcharge may be included in the same billing statement
33 as the service rate or commodity charge.

34 SEC. 2. Section 54999.7 is added to the Government Code, to
35 read:

36 54999.7. (a) Any judicial action or proceeding to seek a
37 refund of a capital facilities fee, service rate, commodity charge,
38 or surcharge, or increase in any of those costs, or challenging the
39 validity of a capital facilities fee, service rate, commodity charge,
40 or surcharge, or increase, imposed on or after January 1, 2004, by

1 a public agency pursuant to this chapter, shall be commenced
2 within 120 days of the effective date of the imposition of the capital
3 facilities fee, service rate, commodity charge, or surcharge, or
4 increase.

5 (b) Any action by a public agency under this chapter to validate
6 an ordinance, resolution, or motion imposing or increasing a
7 capital facilities fee, service rate, commodity charge, or surcharge
8 shall be in accordance with Chapter 9 (commencing with Section
9 860) of Title 10 of Part 2 of the Code of Civil Procedure. However,
10 any action by a public agency imposing or increasing the capital
11 facilities fee, service rate, commodity charge, or surcharge may be
12 commenced no earlier than 120 days from the effective date of the
13 imposition of the capital facilities fee, service rate, commodity
14 charge, surcharge, or increase. The public agency imposing or
15 increasing the capital facilities fee, service rate, commodity
16 charge, or surcharge shall have the burden of producing evidence
17 to establish that it is nondiscriminatory and that, in the case of
18 capital facilities fees, the amount of the capital facilities fee or
19 increase does not exceed the amount necessary to provide capital
20 facilities for which the fee is charged.

21 SEC. 3. Section 54999.8 is added to the Government Code, to
22 read:

23 54999.8. Notwithstanding any other provision of this chapter,
24 a public agency that provides public utility service may charge a
25 public agency *nondiscriminatory*, monthly or periodic service
26 rates, commodity charges, or surcharges, on the basis of the same
27 objective criteria and methodology applicable to comparable
28 nonpublic users, including the costs of operation, maintenance,
29 construction, repair, replacement, or rehabilitation of facilities, or
30 debt service payments on facilities, that are not in excess of
31 ~~reasonable fees for~~ *the reasonable cost of* providing the public
32 utility service.

